CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 30 APRIL 10, 1996 NO. 15

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washing-ton, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 96–19)

REQUEST FOR PUBLIC COMMENTS CONCERNING DISSEMINATION OF EXISTING INFORMATION PRODUCT AND ELIMINATION OF MICROFICHE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice; extension of comment period.

SUMMARY: On February 22, 1996, Customs published in the Federal Register a document inviting public comments regarding its intention to provide Customs rulings, future publications and additional information in CD-ROM and the Internet formats with built-in search capabilities and "hypertext" links. The document also requested comments regarding the possible elimination of the microfiche format used to presently supply rulings to the public by subscription. Comments were to be received on or before March 25, 1996. This document extends for an additional 30 days the period of time within which interested members of the public may comment on the proposals.

DATES: Comments must be received on or before April 25, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street N.W., Suite 4000W, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

For contents and technical aspects of the CD-ROM: Howard Plofker, 202–482–7077.

For the Internet: Kathy Davis, 202–927–0255.

For the microfiche: Thomas Budnik,202–482–6909.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 22, 1996, Customs published a document in the Federal Register (61 FR 6892) requesting public comments concerning propos-

als to provide rulings, future publications and additional information in two new formats (CD-ROM and the Internet) with built-in search capabilities and "hypertext" links, and to eliminate one format used to supply rulings to the public by subscription (microfiche). Comments were requested by March 25, 1996.

Customs has been requested to extend the period of time for comments to allow interested parties to have more time to consider the proposals. Customs believes that it would be appropriate to grant the request. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: March 21, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

(T.D. 96–26)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved November 20, 1995, to February 16, 1996, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and an approval under Treasury Decision 84–49.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner or Port Director to whom the contract was forwarded or approved by, and the date on which it was approved.

Dated: March 21, 1996.

WILLIAM G. ROSOFF,
Director,
International Trade Compliance Division.

(A) Company: Allied Feather & Down Corp.
Articles: Down blends
Merchandise: Goose down; duck down; couchee down; goose feathers; duck feathers
Factory: Vernon, CA
Proposal signed: August 22, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: Houston, January 22, 1996

(B) Company: Biocraft Laboratories, Inc.
Articles: Penicillin G sulfoxide; cephalosporin G; 7-aminodesacetoxycephalosporanic acid (7-ADCA); cephalexin monohydrate; 6-aminopenicillin acid (6-APA); oxacillin sodium monohydrate; cloxacillin sodium monohydrate; amoxicillin trihydrate; dicloxicillin sodium monohydrate; ampicillin trihydrate
Merchandise: Penicillin G potassium (Pen GK); 7-phenylacetaminidodeacetoxy cephalosporanic acid (cephalosporin G) (Ceph G); 7-aminodesacetoxycephalosporanic acid (7-ADCA); pivaloyl chloride (neopentanoyl chloride, trimethylacetyl chloride); bis-(trimethylsilyl)-urea; D-(alpha)-phenylglycine (benezeneacetic acid); D-(-)-paraHydroxyphenylglycine; D-(-) alpha dane salt; D-(-) parahydroxy dane salt
Factories: Mexico, MO; Waldwick, NJ
Proposal signed: November 30, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, January 25, 1996

(C) Company: Citrus World, Inc.
Articles: Orange juice from concentrate; frozen concentrated orange juice; bulk concentrated orange juice for manufacturing
Merchandise: Concentrated orange juice for manufacturing
Factory: Lake Wales, FL
Proposal signed: June 7, 1994
Basis of claim: Used in
Contract forwarded to RC of Customs: Miami, January 16, 1996
Revokes: T.D. 94–82–F; T.D. 84–1–F; Rescinds revocation of T.D. 89–81–I

(D) Company: Clariant Corp.
Articles: Leucophor optical brighteners
Merchandise: 4,4′-diamino-2,2′-stilbenedisulfonic acid (free acid); 4,4′-diamino-2,2′-stilbenesulfonic acid (sodium salt); cyanuric chloride; p-sulfanilic acid
Factories: Charlotte, NC; Martin, SC
Proposal signed: August 22, 1995
Basis of claim: Used in
Contract issued by RC of Customs in accordance with § 191.25(b)(2): New York, December 21, 1995
Revokes: T.D. 93–42–U to cover name change from Sandoz Chemicals Corp., and elimination of factory location

(E) Company: Clariant Corp.
Articles: Dyestuffs
Merchandise: Dye intermediates, per T.D. 72–108(3)
Factories: Martin, SC; Charlotte, NC
Proposal signed: November 27, 1995
Basis of claim: Used in
Contract issued by RC of Customs in accordance with § 191.25(b)(2): New York, January 5, 1996
Revokes: T.D. 89–81–W to cover name change from Sandoz Chemicals Corp.

(F) Company: Constar International
Articles: Plastic bottle preforms; plastic bottles
Merchandise: PET resin thermoplastic polyester
Factories: Jackson, MS; City of Industry, CA; Phoenix, AZ; Greenville, SC; Charlotte, NC; Reserve, LA; Orlando, Hollywood, FL; Collierville, Houston, TX; Atlanta, GA; Havre De Grade, MD (2); Kansas City, KS; New Stanton, PA; Hebron, OH; Leominster, MA; Birmingham, AL; West Chicago, IL
Proposal signed: September 5, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Houston, December 7, 1995
Revokes: T.D. 95–34–F

(G) Company: Continental General Tire, Inc.
Articles: Fabric; tires
Merchandise: Polyester yarn; nylon 6 yarn
Factories: Barnesville, GA; Bryan, OH; Charlotte, NC; Mayfield, KY; Mount Vernon, IL; Odessa, TX
Proposal signed: April 27, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, February 16, 1996

(H) Company: Dow Chemical Co.
Articles: Styrene
Merchandise: Ethylbenzene
Factory: Freeport, TX
Proposal signed: November 27, 1995
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Contract forwarded to PD of Customs: Houston, December 13, 1995

(I) Company: E. I. du Pont de Nemours & Co.
Articles: Neoprene polychloroprene synthetic rubber; neoprene latex
Merchandise: 3,4-dichlorobutene-1 (aka 3,4-DCB)
Factories: Louisville, KY; Pontchartrain, LA
Proposal signed: June 23, 1995
Basis of claim: Used in
Contract forwarded to PDs of Customs: New York & Boston, December 6, 1995

(J) Company: Hercules Inc.
Articles: Resins
Merchandise: Antioxidant
Factory: West Elizabeth, PA
Proposal signed: May 22, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: Boston, November 21, 1995

(K) Company: Hoffman-La Roche Inc.
Articles: L-thiophanium bromide
Merchandise: Thiolactone
Factory Nutley, NJ
Proposal signed: July 19, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, November 21, 1995

(L) Company: Hoffman-La Roche Inc.
Articles: C25 aldehyde
Merchandise: B-ionone; vinylol; C10 dialdehyde
Factory: Freeport, TX
Proposal signed: October 10, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, February 7, 1996

(M) Company: The Kelly-Springfield Tire Co.
Articles: Tires
Merchandise: N-(1,3 dimethylbutyl)-N-phenyl-p-phenylenediamine (aka 6PPD; HPPD; Zonflax®)
Factories: Tyler, TX; Freeport, IL; Fayetteville, NC
Proposal signed: September 27, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, November 20, 1995

(N) Company: Lindgren-Pitman, Inc.
Articles: Monofilament fishing line
Merchandise: Co-polymer nylon pellets
Factory: Pompano Beach, FL
Proposal signed: July 20, 1994
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, December 15, 1995

(O) Company: Lord Corp.
Articles: Industrial adhesives; coatings; film products; specialty chemicals; formulated chemical products
Merchandise: Polyester PE 216, PE230, PE210; crystalline benzoph none; Bayer AG s Mondur CD; TK Risen X-1
Factory: Saegertown, PA
Proposal signed: October 5, 1994
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, December 6, 1995

(P) Company: Matsushita Electronic Components Corporation of America
Articles: Formed aluminum foil; aluminum electrolytic capacitors
Merchandise: Etched & formed aluminum foil; separator papers; electrolytes; essence of electrolytes; ammonium benzoate; ammonium adipate; p-nitrobenzoic acid; tris(hydroxymethyl) aminomethane; aluminum slugs; adhesive tape; vinyl sleeve; lead wire; insulating board; various capacitor parts
Factory: Knoxville, TN
Proposal signed: June 21, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New Orleans, December 14, 1995
Revokes: T.D. 93–86–M

(Q) Company: OSi Specialties, Inc.
Articles: Allyl glycidyl ethers; silicone fluids; urethane additives; SILQUEST catalyst A-187 & Y-4073
Merchandise: Allyl glycidyl ether
Factory: Sistersville, WV
Proposal signed: June 22, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: Boston, December 19, 1995

(R) Company: Prentiss Inc.
Articles: Incite
Merchandise: Piperonyl butoxide
Factory: Sandersville, GA
Proposal signed: August 8, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: Miami, January 23, 1996

(S) Company: Rhone-Poulenc Inc.
Articles: Temik/Lindane pesticide products
Merchandise: Lindane crystals
Factory: Woodbine, GA
Proposal signed: December 26, 1995
Basis of claim: Used in
Contract issued by RC of Customs in accordance with § 191.25(b)(2): New York, February 6, 1996
Revokes: T.D. 90–91–U to cover successorship of Rhone-Poulenc Ag Co.

(T) Company: Rohm & Haas Delaware Valley Inc.
Articles: Systhane 40W; Systhane 2E; Rally 40W; NOVA 40W
Merchandise: RH-3866 crude
Factory: Philadelphia, PA
Proposal signed: August 10, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Houston, November 21, 1995

(U) Company: Rubbermaid Inc.
Articles: Plastic household articles
Merchandise: Polyethylene resins
Factories: Wooster, OH; Courtland, NY; Goodyear, AZ; Greenville & Cleburn, TX; Statesville, NC
Proposal signed: September 6, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: San Francisco, November 30, 1995
Revokes: T.D. 91–86–T

(V) Company: Rubbermaid Specialty Products, Inc.
Articles: Plastic household articles
Merchandise: Polyethylene resins
Factories: Wooster, OH; Winfield, KS
Proposal signed: September 6, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: San Francisco, November 30, 1995

(W) Company: Schott Bros., Inc.
Articles: Leather outerwear
Merchandise: Finished leathers
Factory: Perth Amboy, NJ
Proposal signed: July 24, 1995
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, February 5, 1996

(X) Company: Stanbee Co., Inc.
Articles: Thermoplastic counter material for shoes (in sheets)
Merchandise: Non-woven polyester fabrics
Factory: Carlstadt, NJ
Proposal signed: May 10, 1994
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, February 5, 1996

(Y) Company: U.S. Zinc
Articles: Zinc dust; superfine zinc dust; zinc oxide
Merchandise: Zinc ingots; zinc "scrub" dross
Factories: Houston, TX; Chicago & Hillsboro, IL; East Point, GA; Millington, TN
Proposal signed: December 13, 1995
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Houston, February 14, 1996

(Z) Company: Unitex Chemical Corp.
Articles: Triethyl citrate (Uniplex 80)
Merchandise: Citric acid
Factory: Greensboro, NC
Proposal signed: January 18, 1996
Basis of claim: Used in
Contract forwarded to PD of Customs: Miami, January 26, 1996

APPROVAL UNDER T.D. 84–49

(1) Company: La Gloria Oil and Gas Co.
Articles: Petroleum products and petrochemicals
Merchandise: Crude petroleum and petroleum derivatives
Factory: Tyler, TX
Proposal signed: August 29, 1995
Basis of claim: As provided in T.D. 84–49
Contract forwarded to PD of Customs: Houston, December 13, 1995

(T.D. 96–27)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved October 20, 1994, to April 17, 1995, inclusive, pursuant to Subparts A through C, Part 191, Customs Regulations.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(a) and (b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner to whom the contract was forwarded, and the date on which it was approved.

Dated: March 21, 1996.

WILLIAM G. ROSOFF,
Director,
International Trade Compliance Division.

(A) Company: Composites, Inc.
§ 1313(a) articles: Boron/epoxy prepreg sheets
§ 1313(a) merchandise: Boron filament, 5.6 mil diameter
§ 1313(b) articles: Boron/epoxy prepreg sheet
§ 1313(b) merchandise: Boron filament, 5.6 mil diameter
Factory: Manchester, CT
Proposal signed: October 17, 1994
Basis of claim: Used in
Contract forwarded to RCs of Customs: Boston & New York, April 17, 1995

(B) Company: Searle Chemicals Inc.
§ 1313(a) articles: Enamine; ethisterone; ethisterone pure; ethisterone ketal; aldona crude; aldonal enol ether; aldadiene; spironolactone; and similar formulations of the AD steroidal drug
§ 1313(a) merchandise: Androstenedione pure (AD), a steroidal drug
§ 1313(b) articles: Enamine; ethisterone; ethisterone pure; ethisterone ketal; aldona crude; aldona enol ether; aldadiene; spironolactone; and similar formulations of the AD steroidal drug
§ 1313(b) merchandise: Androstenedione pure (AD), a steroidal drug
Factory: Augusta, GA
Proposal signed: June 23, 1994
Basis of claim: Used in
Contract forwarded to RC of Customs: Chicago, October 20, 1994
Revokes: T.D. 85–75–D (G. D. Searle & Co.)

(C) Company: Simplex Technologies Inc.
§ 1313(a) articles: FIber optic submarine communications cable
§ 1313(a) merchandise: Galvanized steel armor wire; extra high tensile steel wire; copper strip
§ 1313(b) articles: Fiber optic submarine communications cable
§ 1313(b) merchandise: Galvanized steel armor wire; extra high tensile steel wire; copper strip
Factory: Newington, NH
Proposal signed: August 1, 1994
Basis of claim: Appearing in
Contract forwarded to RC of Customs: Boston, October 31, 1994
Revokes: T.D. 85–75–J (Simplex Wire and Cable Co.)

(D) Company: Western Pneumatic Tube Co.
§ 1313(a) articles: Titanium tubing
§ 1313(a) merchandise: Titanium coil sheet
§ 1313(b) articles: Titanium tubing
§ 1313(b) merchandise: Titanium coil sheet
Factory: Kirkland, WA
Proposal signed: October 3, 1994
Basis of claim: Appearing in
Contract forwarded to RC of Customs: Long Beach (San Francisco Liquidation Unit), December 8, 1994

U.S. Customs Service

General Notices

LIST OF FOREIGN ENTITIES VIOLATING TEXTILE TRANSSHIPMENT AND COUNTRY OF ORIGIN RULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under § 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by § 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Michael Compeau, Branch Chief, Seizures and Penalties Division, at 202–927–0762. For information regarding any of the legal aspects, contact Lars-Erik Hjelm, Office of Chief Counsel, at 202–927–6900.

SUPPLEMENTARY INFORMATION

BACKGROUND

Section 333 of the Uruguay Round Agreements Act (URAA)(Public Law 103–465, 108 Stat. 4809)(signed December 12, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a § 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities have been issued a penalty claim under § 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the Customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are

falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to § 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of ori-

gin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

1) Has the importer had a prior relationship with the named party?

2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

4) Where a claim of substantial transformation is made, has the importer ascertained that the named party actually substantially transforms the merchandise?

5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

7) What is the history of this country regarding this commodity?

8) Have you asked questions of your supplier regarding the origin of the product?

9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a biannual publication of the names of the foreign entities. On September 28, 1995, Customs published a Notice in the Federal Register (60 FR 50239) which identified 9 entities which fell within the purview of § 592A of the Tariff Act of 1930.

592A List

For the period ending March 31, 1996, Customs has identified 8 (eight) foreign entities that fall within the purview of § 592A of the Tariff Act of 1930. This list reflects the removal of 5 names from the list published in September 1995, and the addition of 4 new entities. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 8 foreign parties which have been assessed penalties by Customs for violations of § 592 are listed below pursuant to § 592A. This list supersedes any previously published list.

Bestraight Limited, Room 5K, World Tech Centre, 95 How Ming Street, Kwun Tong, Kowloon, Hong Kong.

Cotton Breeze International, 13/1578 Govindpuri, New Delhi, India.

Hangzhou Tongda Textile Group, Room 918, Hangzhou Mansion, No. 1 Wulin Square, Hangzhou, China.

Hanin Garment Factory, 31 Tai Yau Street, Kowloon, Hong Kong.

Hip Hing Thread Company, No. 10, 6/F Building A, 221 Texaco Road, Waikai Industtrial Centre, Tsuen Wan, N.T. Hong Kong.
Poshak International, H–83 South Extension, Part-I (Back Side), New Delhi, India.
United Fashions, C–7 Rajouri Garden, New Delhi, India.
Yunnan Provincial Textiles Import & Export, 576 Beijing Road Kunming, Yun Nan, China.

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, DC 20229.

ADDITIONAL FOREIGN ENTITIES

In the September, 1995 Federal Register notice, Customs also solicited information regarding the whereabouts of 40 foreign entities, which were identified by name and known address, concerning alleged violations of § 592. Persons with knowledge of the whereabouts of those 40 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, DC 20229.

As a result of information received in response to the solicitation, 6 names were removed from the list. In this document, a new list is being published which contains the names and last known address of 37 entities. This reflects the removal of 6 names from the previous list and the addition of 3 new entities to the list.

Customs is soliciting information regarding the whereabouts of the following 37 foreign entities concerning alleged violations of § 592. Their name and last known address are listed below:

Bahadur International, 250 Naraw Industrial Area, New Delhi, India.
Madan Exports, E–106 Krishna Nagar, New Delhi, India.
Gulnar Fashion Export, 14 Hari Nagar, Ashram, New Delhi, India.
Janardhan Exports, E–106 Krishna Nagar, New Delhi, India.
Morrin International, E–106 Krishna Nagar, New Delhi, India.
Jai Arjun Mfg., Co., B 4/40 Paschim Vihar, New Delhi, India.
Eroz Fashions, 535 Tuglakabad Extension, New Delhi, India.
China Artex Corp. Beijing Arts, 132–16 Changan Avenue, Beijing, China.
Shenzhen Long Gang Ji Chuen, Shenzhen, Long Gang Zhen, China.
Traffic, D1/180 Lajpat Nagar, New Delhi, India.
Raj Connections, E–106 Krishna Nagar, Delhi, India.
Bao An Wing Shing Garment Factory, Ado Shi Qu, Bao An Shen Zhen, China.
Guidetex Garment Factory, 12 Qian Jin Dong Jie, Yao Tai Xian Yuan Li, Canton, China.
Dechang Garment Factory, Shantou S.E.Z., Cheng Hai, Cheng Shing, China.

Guangdong Provincial Improved, 60 Ren Min Road, Guangdong, China.
Kin Cheong Garment Factory, No. 13 Shantan Street, Sikou Country, Taishan, Kwangtong, China.
Gold Tube Ltd., No. 55 Hung To Road, Kwun Tong, Kowloon, Hong Kong.
Sam Hing Bags Factory, Ltd., #35 Tai Ping West Road, Jiu Jaing, Ghangdong, China.
Luen Kong Handbag Factory, 33 Nanyuan Road, Shenzhen, Guangdong, China.
Changping High Stage Knitting, Yuan Jing Yuan, Chau Li Qu Chang, Guangdong, China.
Arsian Company Ltd, XII Khorcolo, Waanbaatar, Mongolia.
Kin Fung Knitting Factory, Block A&B, 4th Flr Por Mee Bldg., 500 Casle Peak Rd., Kowloon, Hong Kong.
Cahaya Suria Sdn Bhd, Lot 5, Jalan 3, Kedah, Malaysia.
Crown Garments Factory Sdn Bhd, Lot 112, Jalan Kencana, Bagan Ajam, Malaysia.
Glee Dragon Garment Mfg. Ltd., 328 Castle Peak Rd., Room G 10Fl, Tsuen Kam Centre, Kowloon, Hong Kong.
Richman Garment Manufacturing Co., Ltd., 7th Fl, Singapore Industrial Bldg., 338 Kwun Tong Road, Kowloon, Hong Kong.
Herrel Company, 64 Rowell Road, Suva, Fiji.
Belwear Co., Ltd., Flat C, 3rd Floor, Yuk Yat Street, Kowloon, Hong Kong.
Hambridge Ltd., 9 Fl., Lladro Building 72–80, Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong.
Kingston Garment Ltd., Lot 42–44 Caracas Dr., Kingston, Jamaica.
Moderntex International Inc., 3941, Kowloon, Hong Kong.
Poltex Sdn, 8 Jalan Serdang, Kedah, Malaysia.
Sam Hing International Enterprise, 5 Guernsey St., Guilford NSW, Australia.
Societe Prospere De Vetements S.A., Lome, Togo.
Confecciones Kalinda S.A., Zona Franca, Los Alcarrizos, Santo Domingo, Dominican Republic.
Royal Mandarin Knitworks Co., Flat C 21/F, So Tau Centre, 11–15 Sau Road, Kwai Chung, N.T., Hong Kong.
Wong's International, Nairamdliyn 26, Ulaanbaatar 11, Naaun, Mongolia.

If you have any information as to a correct mailing address for any of the above 37 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, DC 20229.

Dated: March 26, 1996

SAMUEL H. BANKS,
Assistant Commissioner,
Office of Field Operations.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, March 26, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

MARVIN M. AMERNICK,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF JACQUARD WOVEN FABRIC

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of jacquard woven fabric. Notice of the proposed modification was published February 14, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 7.

EFFECTIVE DATE: These decisions are effective for merchandise entered, or withdrawn from warehouse, for consumption on or after June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Branch, (202) 482–7058.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 14, 1996, Customs published a notice in the CUSTOMS BULLETIN, Volume 30, Number 7, proposing to modify NY 810195, dated June 8, 1995, which classified a jacquard woven fabric in subheading 5408.33.9090, HTSUSA, which provides for woven fabrics of artificial filament yarn which contain less than 85 percent by weight of artificial filaments. Upon further examination of the subject jacquard woven fabric, it is Customs belief that the fabric is properly classified in the

provision for woven fabrics of artificial filament yarn which contain more than 85 percent by weight of artificial filaments.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY 810195 to reflect proper classification of the jacquard woven fabric in subheading 5408.23.2960, HTSUSA, which provides for fabrics of artificial filament yarn which contain more than 85 percent by weight of artificial filaments. HQ 958501 modifying NY 810195 is set forth as an attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 26, 1995.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 26, 1996.

CLA–2 RR:TC:TE 958501 jb
Category: Classification
Tariff No. 5408.23.2960

SOSSI MAGHAKIAN
JAMES J. BOYLE & CO.
2525 Corporate Place, #100
Monterey Park, CA 91754

Re: Modification of NY 810195; classification of jacquard woven fabric: fabric made of 100 percent artificial filament yarn; subheading 5408.23.2960, HTSUSA.

DEAR MR. MAGHAKIAN:

On June 8, 1995, our New York office issued to you, on behalf of your client, Neman Brothers & Assoc Inc., New York ruling letter (NY) 810195, classifying a jacquard woven fabric. This is to inform you that the classification determination in NY 810195 is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice of the proposed modification of NY 810195 was published on February 14, 1996, in the CUSTOMS BULLETIN, Volume 30, Number 7.

Facts:

The subject merchandise consists of jacquard woven fabric. A sample of the fabric was submitted to the New York Customs Laboratory for analysis which determined that the

fabric is composed of 100 percent artificial filament rayon yarns. It contains 129.9 single yarns per centimeter in the warp and 87 single yarns per centimeter in the filling. This jacquard woven fabric, composed of yarns of different colors, weighs 216.9 g/m^2. You state that the fabric is to be imported in 70 centimeter widths.

NY 810195 classified the jacquard woven fabric in subheading 5408.33.9090, HTSUSA, which provides for woven fabrics of artificial filament yarn which contain less than 85 percent by weight of artificial filaments.

Issue:

What is the proper classification of the merchandise at issue?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

Heading 5408, HTSUSA, provides for woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405. Subheading 5408.33.9090, HTSUSA, provides for fabrics of artificial filament yarn which contain less than 85 percent by weight of artificial filaments. As the subject jacquard woven fabric is composed of 100 percent artificial filament yarn, it was incorrectly classified in subheading 5408.33.9090, HTSUSA.

Subheading 5408.23.296% HTSUSA, provides for fabrics of artificial filament yarn which contain more than 85 percent by weight of artificial filaments. Accordingly, the subject jacquard woven fabric is so classified.

Holding:

The subject 100 percent filament rayon jacquard woven fabric is correctly classified in subheading 5408.23.2960, HTSUSA, which provides for woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405: other woven fabrics, containing 85 percent or more by weight of artificial filament or strip or the like; of yarns of different colors: the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling: other: other; weighing more than 170 g/m^2. The applicable rate of duty is 16 percent *ad valorem* and the quota category is 618.

NY 810395 is hereby modified.

In accordance with section 625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF HI-TEST ROPE TESTER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of the Hi-Test Rope Tester. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before May 10, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Tariff Classification Appeals Division, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of the Hi-Test Rope Tester.

In New York Ruling Letter (NY) 805620, issued on January 13, 1995, the rope tester was held to be classifiable under subheading 9030.89.00 (then, 9030.89.80), Harmonized Tariff Schedule of the United States (HTSUS), which provides for other instruments and apparatus for measuring or checking electrical quantities. NY 805620 is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that the rope tester is classifiable under subheading 9030.39.00, HTSUS, which provides for instruments and apparatus for checking electrical resistance. The rope tester checks the electrical conductivity of ropes, straps and other materials. The measurement of the "conductivity" of a material varies

inversely with the "resistivity" of the same material. Therefore, as the rope tester checks the electrical conductivity of the material, it concurrently checks for the resistance. Accordingly, the rope tester is classifiable under subheading 9030.39.00, HTSUS, rather than under subheading 9030.89.00, HTSUS, the "basket prevision" for instruments and apparatus for measuring or checking electrical quantities. Customs intends to revoke NY 805620 to reflect the proper classification of the rope tester under subheading 9030.39.00, HTSUS. Proposed HQ 958898 revoking NY 805620 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 21, 1996.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 13, 1995.
CLA–2–90:S:N:N1:105 805620
Category: Classification
Tariff No. 9030.89.8000

JUDY WORKENTIN
JACK R. HULS & CO.
P.O. Box 61–12th Street
P.O. Box 1599
Blaine, WA 98231

Re: The tariff classification of a rope tester from Canada.

DEAR MS. WORKENTIN:

In your letter dated December 22, 1994, on behalf of Hi-Test Detection Instruments, Inc., you requested a tariff classification ruling.

Your literature describes the device, Model SV–02, as a rope tester which does current limited, non-destructive testing of ropes and straps for dielectric breakdown. The tester is used to test ropes and straps for dielectric integrity.

The applicable subheading for a rope tester will be 9030.89.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other instruments and apparatus, for measuring or checking electrical quantities: other instruments and apparatus; such as probe testers, resistivity checkers, logic analyzers, automated integrated circuit testers, device, other. The general rate of duty will be 4.3 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:MM 958898 LTO
Category: Classification
Tariff No. 9030.39.00

MS. JUDY WORKENTIN
JACK R. HULS & COMPANY
P.O. Box 61
Blaine, WA 98231

Re: Hi-Test rope tester; NY 805620 *revoked;* subheading 9030.89.00; resistance/conductance.

DEAR MS. WORKENTIN:

This is in reference to NY 805620, issued to you on January 13, 1995, which concerned the classification of the Hi-Test rope tester under the Harmonized Tariff Schedule of the United States (HTSUS). This is a reconsideration of NY 805620.

Facts:

The Hi-Test rope tester (model SV–02) is a safety device which checks the electrical conductivity of ropes, straps or other materials used near sources of high voltage. A green light indicates that the rope or strap is a nonconductor of electricity; a red light and an audible buzzer signal that it conducts electricity.

Issue:

Whether the Hi-Test rope tester is classifiable under subheading 9030.39.00, HTSUS, which provides for other instruments and apparatus, for checkIng electrical resistance, without a recording device.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

In NY 805620, the rope tester was held to be classifiable under subheading 9030.89.00 (then, 9030.89.80), HTSUS, which provides for other instruments and apparatus for measuring or checking electrical quantities. Subheading 9030.89.00, HTSUS, is the residual subheading for instruments and apparatus of heading 9030, HTSUS. It is our opinion that the merchandise is described by subheading 9030.39.00, HTSUS, which provides for instruments and apparatus for checking electrical resistance, and therefore, cannot be classified under subheading 9030.89.00, HTSUS.

Descriptive literature for the rope tester was sent to the Customs Office of Laboratories and Scientific Services for consideration. The laboratory concluded that the device checks the electrical conductivity of ropes, straps and other materials. The measurement of the "conductivity" of a material varies inversely with the "resistivity" of the same material. *See Webster's Ninth New Collegiate Dictionary,* pg. 274 (1990) (*conductance* is defined as "the readiness with which a conductor transmits an electric current: the reciprocal of electrical resistance"). Therefore, as the rope tester checks the electrical conductivity of the material, it concurrently checks for the resistance—the dielectric properties of the materials tested using the rope tester can be expressed either in terms of resistance or conductance. Because the rope tester is used to check electrical resistance, it is classifiable under subheading 9030.39.00, HTSUS.

Holding:

The Hi-Test rope tester is classifiable under subheading 9030.39.00, HTSUS, which provides for other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device. The corresponding rate of duty for articles of this subheading is 3.6% *ad valorem*.

Effect on Other Rulings:

NY 805620, dated January 13, 1995, is *revoked.*

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF AN ELBOW/KNEE SUPPORT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an elbow/knee support. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before May 10, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W, Suite 4000, Washington DC.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Branch, (202) 482–7058.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an elbow/knee support.

In New York ruling letter (NY) 840648, dated May 17, 1989, a knit elbow/knee support was classified in subheading 6117.80.0030, HTSUSA, which provides for, other made up clothing accessories, knitted or crocheted, other accessories, of man-made fibers. This ruling letter is set forth in "Attachment A". This office has reviewed the decision in NY 840648 and it is our opinion that it is in error.

At issue in this proposed revocation is whether the subject merchandise, i.e., the elbow/knee support, is more specifically provided for in subheading 6307.90.9989, HTSUSA, in the provision for other made up articles, including dress patterns: other: other: other; other: other.

Customs intends to revoke NY 840648, to reflect proper classification of the elbow/knee support in subheading 6307.90.9989, HTSUSA.

Before taking this action, consideration will be given to any written comments timely received. The proposed Headquarters Ruling Letter (HQ) 958791 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 26, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 17, 1989.

CLA–2–61:S:N:N3H:353 840648
Category: Classification
Tariff No. 6117.80.0030

MR. LEN PAWELCZYK
THE CAMELOT COMPANY
9865 West Leland Avenue
Schiller Park, IL 60176

Re: The tariff classification of knitted elbow/knee supports from Japan.

DEAR MR. PAWELCZYK:

In your letter dated May 1, 1989, on behalf of Asahi International Corp., you requested a tariff classification ruling.

You have submitted a sample of an elbow/knee support which is a tube-shaped item measuring approximately 10 inches in length. It is made from a knit construction fabric. In your letter, you stated that the fabric has a component weight breakdown as follows: 39% cotton and 61% man-made fibers, which are a blend of 33% polyvinyl chloride, 13% polyurethane, and 15% nylon filament yarn. Ten magnets are sewn into the supporter to help eliminate pain in the joint regions, according to a claim in the descriptive literature received with your letter. The elbow/knee supporters will be imported in bulk. A sample is enclosed.

The applicable subheading for the elbow/knee support will be 6117.80.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up clothing accessories, knitted or crocheted, * * *, other accessories, of man-made fibers. The rate of duty will be 15.5 percent *ad valorem*.

The elbow/knee support falls within textile category designation 659. As a product of Japan this merchandise will be subject to the requirement of a visa and quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:TE 958791 jb
Category: Classification
Tariff No. 6307.90.9989

MR. LEN PAWELCZYK
THE CAMELOT COMPANY
9865 West Leland Avenue
Schiller Park, FL 60176

Re: Revocation of NY 840648; classification of knitted elbow/knee support; merchandise is not an accessory; EN to heading 6307; other made up articles.

DEAR MR. PAWELCZYK:

On May 17, 1989 our New York office issued to you New York ruling letter (NY) 840648, which determined that a knit elbow/knee support imported from Japan was classifiable in heading 6117, HTSUSA, as an other made up clothing accessory. At the request of our New York office, Customs has reviewed NY 840648 and determined that it is in error. Accordingly, NY 840648 will be revoked to reflect proper classification of the merchandise in heading 6307, HTSUSA.

Facts:

The merchandise at issue consists of a knit elbow/knee support which is tube shaped and measures approximately 10 inches in length. The merchandise is composed of 39 percent cotton and 61 percent man-made fibers which are a blend of 33 percent polyvinyl chloride, 13 percent polyurethane and 15 percent nylon filament yarn. According to accompanying literature, ten magnets are sewn into the supporter to help eliminate pain in the joint regions.

In NY 840648 the merchandise at issue was classified in subheading 6117.80.0030, HTSUSA, which provides for, other made up clothing accessories, knitted or crocheted, other accessories, of man-made fibers.

Issue:

Whether the subject merchandise is properly classifiable in heading 6117, HTSUSA; as an other made up clothing accessory or in heading 6307, HTSUSA, as an other made up article?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Heading 6117, HTSUSA, provides for, among other things, other made up clothing accessories, knitted or crocheted. In Headquarters Ruling Letter (HQ) 088540, dated June 3, 1991, Customs determined an "accessory" to be a specific article intended for use solely or principally with a particular article. In HQ 950470, dated January 7, 1992, citing Webster's New Collegiate Dictionary, the word "accessory" was defined as "a thing of secondary or subordinate importance, or an object or device not essential in itself, but adding to the beauty, convenience, or effectiveness of something else". In order for the merchandise in question, i.e., elbow/knee support, to be classifiable in this heading, it must be considered an accessory to clothing. In essence, the elbow/knee support must accent, supplement or otherwise be related to a particular piece of clothing. The principal function of the merchandise in question is to guard the user from injury to the elbows or knees, and not to enhance the user's clothing. Moreover, the elbow/knee support is to be worn over bare elbows and knees and therefore has no relation to the wearer's clothing. As such, the subject elbow/knee support is not an accessory and is not classifiable in heading 6117, HTSUSA.

Heading 6307, HTSUSA, provides for, among other things, other made up articles. The Explanatory Notes to the Harmonized Commodity and Description and Coding System (EN) to heading 6307, HTSUSA, state:

> This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.
>
> It includes, in particular:
>
> (27) Support articles of the kind referred to in Note 1(b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrists) or muscles (e.g., thigh muscles), **other than** those falling in other headings of Section XI.

The subject elbow/knee support is the type of merchandise specifically provided for in the EN to heading 6307, HTSUSA. As this item is a made up textile article not more specifically provided for elsewhere in the tariff, it is properly classifiable in heading 6307, HTSUS. *See also*, HQ 952568, dated January 28, 1993 and HQ 951406, dated July 13, 1992, where knee and elbow supports similar to the subject merchandise were classified as other made up articles in heading 6307, HTSUSA.

Holding:

The subject elbow/knee support is property classifiable in subheading 6307.90.9989, HTSUSA, which provides for, other made up articles, including dress patterns: other: other: other; other: other. The applicable rate of duty is 7 percent *ad valorem* and there is no designated textile restraint category. Accordingly, NY 840648 is revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A WOMAN'S SANDAL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a woman's sandal. Comments are invited on the correctness of the proposed ruling

DATE: Comments must be received on or before May 10, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington DC.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Branch, (202) 482–7058.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a woman's sandal.

In District Decision (DD) 814317, dated September 25, 1995, a woman's sandal with a rubber/plastic sole and an upper of leather and plastic was classified in subheading 6402.99.30, HTSUSA, which provides for other footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper. This ruling letter is set forth in "Attachment A". This office has reviewed the decision in DD 814317 and it is our opinion that it is in error.

At issue in this proposed revocation is whether the subject merchandise, i.e., the woman's sandal, is more specifically provided for in subheading 6403.99.90, HTSUSA, the provision for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.

Customs intends to revoke DD 814317, to reflect proper classification of the woman's sandal in subheading 6403.99.90, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HQ) 958645 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 26, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
Boston, MA, September 25, 1995.

CLA–2–64:D11:814317
Category: Classification
Tariff No. 6402.99.30

MR. ROGER J. CRAIN
PRESIDENT
CUSTOMS SCIENCE SERVICES, INC.
3506 Frederick Place
Kensington, MD 20895–3405

Re: Classification of footwear.

DEAR MR. CRAIN:

In your recent letter, on behalf BBC International, Ltd., you requested a tariff classification on a shoe to be produced in Italy.

The submitted sample, style "Lofton", is a woman's sandal with a plastic and leather upper. The leather portion, of the upper is in the form of a narrow slotted vamp which covers the instep and toe areas and two "Y" straps that sling around the heel connected to a buckle closure. The vamp has three slots. The plastic is in the form of three strips which run from side to side of the instep area and pass through the slotted vamp. The plastic strips cover a major portion of the instep area including under the vamp slots. The sole is produced from rubber.

Your laboratory analysis, for a child's sandal, indicates the leather is 60.1% and the rubber/plastics at 39.9%. You state the plastic strips under the leather vamp slots were counted as leather, your analysis is not correct, the plastic should be included as surface area.

Based on visual examination, we have determined the plastic as the material having the greatest external surface area of the upper. The external surface area of the upper is under 90% rubber and/or plastic.

The footwear should be sampled by Customs at the port of entry, at the time of importation to verify the external surface area of the upper.

The applicable subheading for the sample will be 6402.99.30, Harmonized Tariff Schedule of the United States (HTS), which provides for other footwear, in which the upper's external surface is predominately rubber and/or plastics; in which the outer sole's external surface is predominately rubber and/or plastics; which is other than "sports footwear"; in which there is no protective metal toe-cap; in which the top of the upper does not cover the wearer's ankle; in which the upper's external surface is not over 90 percent rubber and/or plastics, including accessories and reinforcements; which have open toes or open heels; which is not designed to be protective against water, oil, or cold or inclement weather. The rate of duty will be 37.5 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JAMES V. MCLAUGHLIN,
Acting District Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:TE 958645 jb
Category: Classification
Tariff No. 6403.99.90

ROGER J. CRAIN
CUSTOMS SCIENCE SERVICES, INC.
3506 Frederick Place
Kensington, MD 20895–3405

Re: Revocation of a woman's sandal with plastic and leather upper; external surface area of the upper; analysis based on the greatest area exposed on the shoes surface.

DEAR MR. CRAIN:

This is in regard to your letter, dated November 1, 1995, on behalf of your client, BBC International Ltd., requesting reconsideration of DD 814317, regarding the classification of a woman's sandal. A sample was received by this office for examination.

Facts:

The subject woman's sandal, referenced style "Lofton", consists of a rubber/plastic sole and an upper made of leather and plastic. The upper consists of a two part leather ankle strap assembly with a metal buckle and a leather vamp attached at the toe covering the top of the wearer's foot, which is attached to the ankle strap assembly. Three clear plastic straps are attached to the sides of the sole and are threaded through angled slots in the leather vamp.

In District Decision (DD) 814317, dated September 25, 1995, Customs determined that the plastic, not the leather, constituted the greatest external surface of the sandal. The sandal was classified in subheading 6402.99.30, HTSUS, which provides for, other footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper.

Issue:

Whether the plastic or the leather constitutes the greatest external surface area of the upper?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Heading 6403, HTSUSA, provides for, footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather. General Note (D) to chapter 64, HTSUSA, states, in relevant part:

> For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole * * *
>
> If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

The greatest external surface area of the upper is the outside surface of what actually covers the foot. In the case of an interwoven upper of various materials, as in the subject merchandise, only the area that is exposed on the shoe's surface should be considered in

determining the greatest external surface area. Based upon a visual examination of the submitted sandal, it is the opinion of this office that the greatest external surface area of the upper is formed by the leather. Additionally, it should be noted that this shoe is held on to the foot by means of a buckle. As such, classification in subheading 6404.99.30, HTSUSA, is improper. Accordingly, proper classification for the subject merchandise is in heading 6403, HTSUSA.

Holding:

The subject woman's sandal, referenced style "Lofton", is classified in subheading 6403.99.90, HTSUSA, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather; other footwear; other: other: other: for other persons: valued over $2.50/pair. The applicable rate of duty is 10 percent *ad valorem* and there is no textile restraint category. DD 814317 is hereby revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Clerk

Joseph E. Lombardi

(Slip Op. 96–55)

HUMANE SOCIETY OF THE UNITED STATES, HUMANE SOCIETY INTERNATIONAL, DEFENDERS OF WILDLIFE, ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, WHALE AND DOLPHIN CONSERVATION SOCIETY, AND EARTH ISLAND INSTITUTE, PLAINTIFFS *v.* RON BROWN, SECRETARY OF COMMERCE, AND WARREN CHRISTOPHER, SECRETARY OF STATE, DEFENDANTS

Court No. 95–05–00631

(Dated March 18, 1996)

JUDGMENT

AQUILINO, *Judge:* The plaintiffs having commenced this action and applied for immediate equitable relief; and the defendants having responded with a motion to dismiss the complaint; and the court in slip op. 95–148, 19 CIT ____, 901 F.Supp. 338 (1995), having granted in part and denied in part defendants' motion and having denied plaintiffs' application but granted them limited discovery; and the plaintiffs having thereafter interposed a motion for summary judgment in lieu of trial on their remaining cause of action; and the defendants having cross-moved for judgment on their record or for summary judgment; and the court in slip op. 96–38, 20 CIT ____, ____ F.Supp. ____ (Feb. 16, 1996), having denied defendants' motion and granted plaintiffs' motion upon extensive findings of fact and conclusions of law, including that the information presented gives reason in the mind of an ordinarily intelligent person to believe that Italians continue to engage in large-scale driftnet fishing in the Mediterranean Sea in defiance of the law of Italy and of the rest of the world and that identification of Italy under the High Seas Driftnet Fisheries Enforcement Act, 16 U.S.C. § 1826a(b)(1)(B), has been unlawfully withheld and unreasonably delayed and that the defendant Secretary of Commerce's decision not to make such identification has been an abuse of discretion and not in accordance with that law; and the court having directed the parties to

confer and present within 30 days a proposed form of final judgment; and the parties having forwarded such a form; and the court having afforded the parties an opportunity to be heard in support of or opposition to the proposed judgment; Now, therefore, in conformity with the foregoing, cited decisions of the court, and after due deliberation, it is

ORDERED, ADJUDGED and DECREED that Count One of plaintiffs' complaint be, and it hereby is, dismissed; and it is further

ORDERED, ADJUDGED and DECREED that plaintiffs' motion for summary judgment on Count Two of their complaint be, and it hereby is, granted; and it is further hereby

ORDERED, ADJUDGED and DECREED that Italy is a nation for which there is reason to believe that its nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation and that its identification under the High Seas Driftnet Fisheries Enforcement Act, 16 U.S.C. § 1826a(b)(1)(B), has been unlawfully withheld and unreasonably delayed and that the defendant Secretary of Commerce's decision not to make such identification has been an abuse of discretion and not in accordance with that law; and it is further hereby

ORDERED that, within ten (10) days of the date hereof pursuant to 16 U.S.C. § 1826a(b)(1)(B), the United States Secretary of Commerce (i) identify Italy as a nation for which there is reason to believe that its nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation and (ii) notify the President of the United States and the nation of Italy of this identification.

NOTE: This is to advise that Slip Op. 96–56 is not available for publication at this time due to the confidential nature of the document. A public version of the document will be released and published in the CUSTOMS BULLETIN when available.

(Slip Op. 96–56)

E.I. DUPONT, ETC., ET AL., PLAINTIFF *v.* UNITED STATES, ET AL., DEFENDANT

Court No. 91–07–00487

(Dated March 20, 1996)

(Slip Op. 96–57)

E.M. CHEMICALS, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–02–00134

[Plaintiff's motion for summary judgment denied. Defendant's motion for summary judgment denied.]

(Decided March 20, 1996)

Sonnenberg & Anderson (Philip Yale Simons, and *Jerry P. Wiskin; Michelle D. Mancias,* of counsel) for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Barbara M. Epstein);* United States Customs Service *(Chi Choy),* of counsel, for defendant.

MEMORANDUM AND ORDER

I

INTRODUCTION

WALLACH, *Judge:* Plaintiff, E.M. Chemicals, challenges the classification of imported thermochromic liquid crystal mixtures (hereinafter "TLCs"), also known as chiral nematic liquid crystal mixtures, by the United States Customs Service ("Customs"). Customs classified the merchandise as other products of the chemical industry containing five percent or more of aromatic substances under the Harmonized Tariff Schedule of the United States (hereinafter "HTSUS") subheading 3823.90.29, and assessed duty at a rate of 13.6 percent *ad valorem* plus 3.7 cents per kilogram. E.M. Chemicals asserts that the TLCs are properly classified under HTSUS subheading 3204.90.00 as "Synthetic organic coloring matter * * * Other," with duty assessable at 5.9 per cent *ad valorem*. Defendant, the United States, argues, without a counterclaim, that if Heading 3204 is the appropriate heading, then subheading 3204.19.40 is the proper classification (which carries a 15% rate of duty). This Court exercises its jurisdiction pursuant to 28 U.S.C. § 1581(a) (1994).

The parties have submitted motions for summary judgment. They are denied because genuine issues of fact remain with respect to the "principal use" issue, discussed below. The purely legal issue concerning the structure of Heading 3204 and the subheadings thereunder is, however, appropriate for summary adjudication pursuant to USCITR 56(c). Consequently, the Court determines that if Plaintiff establishes at trial that the subject merchandise is "coloring matter" within the meaning of Heading 3204, then subheading 3204.19.40, suggested by Defendant, is the appropriate classification subheading for the merchandise.

II

BACKGROUND

A

STATEMENT OF MATERIAL FACTS NOT IN ISSUE

The imported merchandise at issue consists of Licritherm standard mixtures, designated by plaintiff as "TM75A", "TM75B", "TM74A" and "TM74B" and other special mixtures, designated by plaintiff as "TM533" and "TM519". These articles are chiral nematic liquid crystal mixtures, commonly known as "thermochromic liquid crystals." Complaint and Answer ¶ 5 (hereinafter "Comp. & Ans."); Plaintiff's Statement of Material Facts Not In Issue (hereinafter "PSMF") and Defendant's Response (hereinafter "DR") ¶ 4; Defendant's Statement of Material Facts Not In Issue (hereinafter "DSMF"), Plaintiff's Response (hereinafter "PR") ¶ 1. The imported articles are mixtures of chiral nematic liquid crystal compounds each of which has a different chemical composition. Comp. & Ans. ¶ 7; PSMF and DR ¶ 6. Merck Ltd. of Poole, England produces the liquid crystals. PSMF and DR ¶ 6. The imported TLCs are mixtures of two or more synthetic organic compounds. DSMF and PR ¶ 2; PSMF and DR ¶ 7. TLCs are used in their condition as imported and they do not undergo chemical processing after importation. PSMF and DR ¶ 27. In addition, they are not further chemically altered after importation. PSMF and DR ¶ 28.

Liquid crystals are classified as: smectic, nematic and chiral nematic.[1] In general, their molecules are rod-shaped. Comp.& Ans. ¶ 9.

Chiral nematic liquid crystals have a natural twisted structure which imparts a three-dimensional order. The individual liquid crystal molecules are arranged in parallel planes. On each plane the long axes of the molecules point in the same direction but in the next higher or lower plane the direction of the long axes of the liquid crystal molecules is offset, so that the direction of the long axes traces out a helical path when going from one plane of molecules to the next. Comp. & Ans. ¶ 12; PSMF and DR ¶ 10.

The helical architecture of chiral nematic liquid crystal molecules in the liquid crystal mixture causes it to exhibit color. The color depends on the chemical composition of the individual chiral nematic liquid crystal molecules in the mixture and, in most cases, the ambient temperature. Comp. & Ans. ¶ 13; PSMF and DR ¶ 11. As a result, TLCs are a particular color at a particular temperature. PSMF and DR ¶ 15. In some TLCs, if the temperature is changed by a small amount, a different color is exhibited. PSMF and DR ¶ 16. Other TLCs remain a single color over a wide temperature range. PSMF and DR ¶ 17. Dyes, pigments and thermochromic liquid crystals all absorb, reflect or constructively interfere with incident light to produce color and impart these colors to the products in which they are used, PSMF and DR ¶ 39, but TLCs are not pig-

[1] Chiral nematic liquid crystals are also known as cholesteric liquid crystals. Plaintiff's Motion For Summary Judgment, ftnt 13.

ments, DSMF and PR ¶ 6, or dyes. Comp. & Ans. ¶ 18, DSMF and PR ¶ 4, PSMF and DR ¶ 24.

E.M.'s TLCs with the designation "TM" change color over a narrow temperature range. PSMF and DR ¶ 20. E.M. uses different letter designations to indicate different uses of the TLCs. The "TM" mixtures here at issue function to exhibit color. PSMF and DR ¶ 22. A common application of TLCs is in temperature indicating devices in which they indicate the ambient temperature by changing color as the temperature changes.[2] PSMF and DR ¶ 35.

B

Material Facts in Issue

The parties' central dispute is whether the principal use of TLCs is to impart color or measure temperature. Comp. & Ans. ¶ 16. Plaintiff states that TLCs impart color to the products in which they are incorporated. Defendant denies that the TLCs "impart" color, but says that they "exhibit" color at a particular temperature. PSMF and DR ¶ 43. Further, Plaintiff claims that TLCs impart a specific color at a specific temperature, but Defendant asserts that color is "exhibited" at a specific temperature. PSMF and DR ¶ 32. That factual issue precludes summary judgment. Because principal use is the determining factor of whether the basket provision applies to the subject merchandise, material facts are in dispute.

III

Discussion

A

Genuine Issues of Material Fact Exist Which Preclude Summary Judgment as a Matter of Law

Under the rules of this Court, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCITR 56(d). Summary judgment will be denied, however, if the parties present "a dispute about a fact such that a reasonable trier of fact could return a verdict against the movant." *Semperit Indus. Prod., Inc. v. United States,* 18 CIT ____, 855 F. Supp. 1292, 1297 (1994), quoting *Ugg Int'l, Inc. v. United States,* 17 CIT 79, 83, 813 F. Supp. 848, 852 (1993) (citations omitted). As previously discussed, the parties dispute the material fact of whether the principal use of TLCs is as coloring matter. Accordingly, as is shown below, summary judgment must be denied to both parties.

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[2] TLCs designated as "TM" are commonly used as temperature indicating devices, according to Defendant. Plaintiff says that thermochromic liquid crystals designated as "TM" liquid crystals are used in temperature indicating devices (omitting the term "commonly"). DSMF and PR ¶ 14. Both agree that temperature indication is one use.

B

SUBHEADING 3823.90.29 IS A BASKET PROVISION, APPLICABLE TO THE SUBJECT MERCHANDISE ONLY IF IT CANNOT BE CLASSIFIED UNDER A MORE SPECIFIC PROVISION OF THE HTSUS

Customs classified the TLCs at issue under HTSUS 3823.90.29[3] which reads, in part:

Chapter 38: Miscellaneous Chemical Products

3823	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:
.90	Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substance
.29	Other.

Plaintiffs in a classification case are faced with two hurdles in order to prevail: "(1) deference to an agency's reasonable interpretation of the statute it administers; and (2) the statutory presumption, found in *28 U.S.C. Sec. 2639*, that Customs's decisions have a proper factual basis unless the opposing party proves otherwise." *Goodman Mfg., L.P. v. United States*, 69 F.3d 505, 508 (Fed. Cir. 1995); *see* 28 U.S.C. § 2639 (a)(1) (1994). E.M. Chemicals, as Plaintiff, bears the burden of overcoming these barriers.

As stated above, Heading 3823 provides for: "chemical products * * * **not elsewhere specified or included;** residual products of the chemical or allied industries, **not elsewhere specified or included."** (emphasis added). Plaintiff argues that according to the express language of this heading, if a chemical product is specified elsewhere in the tariff schedule it must be classified under the specified provision rather than under a subheading of Heading 3823. At oral argument, Defendant conceded, and the Court agrees with Plaintiff's argument that subheading 3823.90.29 is a "basket provision" which cannot be applied until other provisions of the HTSUS are examined to determine if the subject merchandise is more appropriately classified elsewhere. *See* Sturm, *Customs Law & Admin* § 52 (1995), at 78 and cases cited. Consequently, the Court will examine Plaintiff's proposed subheading, 3204.90.00 and Defendant's suggested subheading 3204.19.40, either of which, if applicable, would take the TLCs out of Customs' basket classification and successfully overcome both the deference owed to Customs in its capacity as administrator of the tariff schedules of the United States and the statutory presumption that Customs' decisions are based on a sound factual basis.

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[3] Subsequent to importation of the merchandise here at issue, this subheading was renumbered 3823.90.27. Supplement 1 to the Harmonized Tariff Schedule of the United States (1991), Change Record.

C

HEADING 3204 IS A "PRINCIPAL USE" PROVISION WHICH REQUIRES THE PARTIES TO PROVE THE PRINCIPAL USE OF THE CLASS OR KIND OF GOODS TO WHICH THE TLCS BELONG

The meaning of tariff terms is a question of law, while their application to a particular product is a question of fact. *E.M. Chem. v. United States*, 9 Fed. Cir. (T) 33, 35, 920 F.2d 910, 912 (1990). The threshold issue is whether Heading 3204 is a principal use provision. Heading 3204 covers: "Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined". For the reasons stated below, the Court holds that the term "coloring matter" in Heading 3204 is a principal use provision.

There are two principal types of classification by use: (1) classification according to the use of the class or kind of articles to which the imported merchandise belongs, and (2) classification according to the actual use of the imported merchandise. Sturm, *Customs Law & Admin* § 53.3 (1995); *see* Additional U.S. Rule of Interpretation 1(a), *infra*; *see also Lenox Coll. v. United States*, 20 CIT ___, Slip Op. 96–30 (Feb. 2, 1996). Provision (2) is inapplicable to this case.[4]

While some provisions expressly declare that classification of designated merchandise is dependent upon principal use, in most cases, principal use is implied from the language of the HTSUS. In other words, "[a] designation by use may be established, although the word 'use' or 'used' does not appear in the language of the statute." *E.C. Lineiro v. United States*, 37 CCPA 10, 14, C.A.D. 411 (1949) and cases cited.[5]

I

HEADING 3204 IS A PRINCIPAL USE PROVISION

Defendant argues Heading 3204 is a "principal use" provision because the plain language of the Heading referring to the term "coloring matter" implicitly provides for "matter" used for "coloring". The word "coloring" acts as an adjective modifying the word "matter" in a way that "compels one to consider some aspect of use." Defendant's Cross-Motion at 10–11 (hereinafter "DCM"). Defendant bases this assertion on the Federal Circuit's reasoning in *Stewart-Warner Corp. v.*

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[4] "Actual use" is to be considered only when the tariff classification is controlled by use. Under the TSUS, an example of an "actual use" provision is item 131.37 which provides for "Rice, Patna, cleaned, **for use** in the manufacture of canned soups." Sturm, *Customs Law & Admin* § 53.3 (1995). (emphasis added). Similarly, HQ Ruling 957494, dated April 24, 1995, refers to HTSUS subheading 8408.90.10 as an "actual use" provision. Subheading 8408.90.10 classifies "Compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Other engines: **To be installed** in agricultural or horticultural machinery or equipment". (emphasis added). Neither party here submits that any of the subheadings at issue are "actual use" provisions.

[5] The concept of "principal use" is found in the TSUS (referred to as "chief use") as well as the HTSUS. *See Lenox Coll.*, 20 CIT ___, Slip Op. 96–30 at page 4. Although prior decisions under TSUS are not binding on decisions made under the HTSUS, TSUS decisions should be considered instructive in interpreting similar or the same nomenclature in the HTSUS. *See* H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1582, 1583.

United States, 3 Fed. Cir. (T) 20, 748 F.2d 663 (1984), in which the Court held that the provision for "bicycle speedometers" was controlled by "chief use". The Court stated:

> Logic indicates that "bicycle speedometers" is a term "controlled by use," as General Interpretative Rule 10(e)–(i) provides, because the noun "bicycle" acts as an adjective modifying "speedometer" in a way that implies use of the speedometer on a bicycle. If the modifying word or words were purely descriptive—i.e., a "green" speedometer or a "three-inch-in-diameter" speedometer—then the question of use would not arise. However, by employing the term "bicycle" to modify "speedometer," logic compels one to consider some aspect of use.

Id. at 25; 748 F.2d at 667.

Thus, the Defendant concludes that by applying the same reasoning, the word "coloring" acts as an adjective modifying the word "matter" and necessitates the consideration of use. DCM at 10–11.

Defendant also points to the Explanatory Notes[6] for further support of its argument that the term "coloring matter" is a principal use provision. The Explanatory Notes to Heading 3204 (sec. 32.04) state explicitly that "substances which 'in practice' are not used for their dying properties are **excluded.**" DCM at 12, citing *Explanatory Notes* at 455 (emphasis in original). The Explanatory Notes, while not legally binding, "provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system." DCM at 11–12, quoting H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582. A list of substances that are used for purposes other than coloring is excluded from the "coloring matter" heading.

The Court agrees with Defendant, and Plaintiff does not dispute, that the term "coloring matter" as found in Heading 3204 is a principal use provision. Additional US Rule of Interpretation 1 to the HTSUS[7] states: "* * * a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use * * *".

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. *Group Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 1177, 839 F. Supp.

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[6] The *Explanatory Notes* are the official interpretation of the scope of the Harmonized Commodity Description and Coding System (which served as the basis of the HTSUS) as viewed by the Customs Cooperation Council, the international organization that drafted that international nomenclature. Thus, while the *Explanatory Notes* "do not constitute controlling legislative history," they "nonetheless are intended to clarify the scope of HTSUS subheadings and to offer guidance in interpreting its subheadings." *Mita Copystar Amer. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The *Explanatory Notes* are "generally indicative of the proper interpretation of the [HTSUS]." *Lynteq, Inc. v. United States*, 976 F.2d 693, 699 (Fed. Cir. 1992), *quoting* H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582.

[7] The Additional U.S. Rules of Interpretation are not part of the international text of the Harmonized System. However, they are part of the HTSUS enacted by Congress as the United States tariff statute, *see* Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, § 1204 (a) (1) (C), 102 Stat. 1107, 1148, and are to be considered "statutory provisions of law for all purposes." *Id.* § 1204 (c) (1), 102 Stat. at 1149.

866, 867 (1993). "Principal use" is defined as the use "which exceeds any other *single* use." *Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report* at 34–35 (USITC Pub. No. 1400) (June 1983). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs." *Lenox Coll.*, 20 CIT ____, Slip Op. 96–30 at page 4.

II

THE PARTIES HAVE FAILED TO ESTABLISH THE CLASS OR KIND OF GOODS TO WHICH THE TLCs BELONG

When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377, *cert. denied*, 429 U.S. 979 (1976); *see also Lenox Coll.*, 20 CIT ____, Slip Op. 96–30, at page 5.

The Court finds that there is conflicting evidence under the *Carborundum* factors above cited, and accordingly that principal use cannot be determined in a Motion for Summary Judgment.[8] Thus, Customs' classification of the imported merchandise under subheading 3823.90.29 cannot be affirmed because, as a matter of law, subheading 3823.90.29 mandates classification of an import that is specified elsewhere in the HTSUS in that other provision. Whether Plaintiff has successfully overcome the deference owed to Customs and the statutory presumption remains to be determined at trial as more evidence must be examined to determine whether the imported merchandise should be classified in an alternative subheading. The Court can, however, at this point narrow for trial issues regarding classification.

[8] Plaintiff argued on pages 1–3 of its Response Brief that Defendant admitted that "chiral nematic liquid crystals are a separate class of merchandise," PR at 2–3, because Defendant "admitted" to ¶¶ 8, 9 of the Complaint. At oral argument, however, Plaintiff conceded that it had, through an oversight, omitted the words "of merchandise" from ¶ 9, and that, accordingly, its basis for claiming an "admission" was invalid.

D

IF TLCS ARE COLORING MATTER, THEY ARE PROPERLY CLASSIFIED UNDER HTSUS 3204.19.40

Customs has proposed as an alternative classification to HTSUS 3823.90.29, that if the TLCs are coloring matter, they are properly classified under HTSUS 3204.19.40 which provides:

3204: Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined:
Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter:
.19: Other, including mixtures of coloring matter of two or more of the subheadings 3204.11 to 3204.19:
Other:
.40 Other: Products described in additional U.S. note 3 to section VI.

Plaintiff argues that TLCs should be classified under HTSUS 3204.90.00 which provides:

3204: Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined:
.90: Other

Three categories of merchandise encompassed are by Heading 3204: (1) synthetic organic coloring matter, whether or not chemically defined; (2) preparations specified in chapter note 3 based on synthetic organic coloring matter; and (3) synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined. The subheadings indented one space under Heading 3204 cover "synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter" (3204.11 to 3204.19); "Synthetic organic products of a kind used as fluorescent brightening agents" (3204.20); and "Other" (3204.90).

Both parties agree that the TLCs in this action are neither "preparations specified in note 3 to this chapter based on synthetic organic coloring matter", Comp. & Ans. ¶ 19; PSMF and DR ¶ 25; DSMF and PR ¶ 7, nor "synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined." Comp. & Ans. ¶ 20; PSMF and DR ¶ 26; DSMF and PR ¶ 9. Therefore, in order to be properly classifiable under Heading 3204, the subject merchandise must be classifiable under a subheading covering "synthetic organic coloring matter, whether or not chemically defined". Based upon the parties' admissions stated above, the only two subheadings

which possibly could be applied to "synthetic organic coloring matter" are subheadings 3204.11 to 3204.19, covering "synthetic organic coloring matter * * *" proposed by Defendant, and subheading 3204.90 "Other" proposed by Plaintiff.

The "[C]ourt's duty is to find the *correct* result, by whatever procedure is best suited to the case at hand." *Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878 (1984). The Court may remand the case to Customs for further review as to the correct classification, conduct its own hearing, or examine the law and tariff schedules on its own initiative. *Id.* at 74, 75; 733 F.2d at 878. An examination of the provisions in question leads the Court to determine, for the reasons that follow, that subheading 3204.19.40 covers the imported merchandise, assuming the TLCs are coloring matter.

As stated above, the first subheading indented one space under Heading 3204 reads "Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter". Plaintiff argues that the lack of the phrase "whether or not chemically defined" in this subheading indicates that Congress did not intend all synthetic organic coloring matter to be classified under subheadings 3204.11 to 3204.19. PR at 19. Plaintiff claims that Congress' omission of the phrase in question indicates that Congress wanted only chemically defined merchandise to be classified here. According to Plaintiff, the phrase "synthetic organic coloring matter" must refer to single chemical substances because the *Explanatory Notes*' use of the language "mixtures of two or more products" cannot refer to products which are already mixtures, such as the subject merchandise. PR at 25, citing *Explanatory Notes* at 456. Plaintiff concludes that subheading 3204.90.00 is the only subheading under Heading 3204 that provides for synthetic organic coloring matter which contain mixtures of two or more products. PR at 21–22.

Plaintiff's analysis is incorrect. The deletion of "whether or not chemically defined" does not limit the subheading to only chemically defined synthetic organic coloring matter because the phrase "whether or not", when used in a superior heading, is considered to modify the article descriptions in the provisions under that heading even though the phrase was not repeated in the provisions thereunder. *See General Electric Co. v. United States*, 83 Cust. Ct. 56, 61, C.D. 4822 (1979). In *General Electric Co*, decided by this Court under the Tariff Schedules of the United States (TSUS), the Court reasoned that "the invasive character of the 'whether or not' language in the superior heading would make recitation of such language in each of the indented subheadings redundant." *General Electric Co. v. United States*, 83 Cust. Ct. 56, 61, C.D. 4822 (1979). *See also Montgomery Ward & Co., Inc. v. United States*, 74 Cust. Ct. 125, 130, C.D. 4596 (1975) (holding that "whether or not" phrase in the superior heading qualifies all of the provisions subordinate to the superior heading).

Further, Plaintiff's proposed subheading 3204.90.00 does not encompass the subject merchandise based on the structure of the statute. General Rule of Interpretation 6 to the HTSUS provides that "[f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings * * * on the understanding that only subheadings at the same level are comparable." Subheadings 3204.11 to 3204.19 "Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter", subheading 3204.20 "Synthetic organic products of a kind used as fluorescent brightening agents" and subheading 3204.90.00 "Other" are all at the same level because they are all indented one space below the Heading. Comparing subheading 3204.90.00 to the other subheadings under Heading 3204, "Other" refers to merchandise "other" than "synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter" and "other" than "synthetic organic products of a kind used as fluorescent brightening agents". Therefore, as the Court has already determined that subheadings 3204.11 to 3204.19 cover "synthetic organic coloring matter" whether or not chemically defined, subheading 3204.90.00 cannot include this type of merchandise.

Within subheadings 3204.11 to 3204.19, covering "synthetic organic coloring matter" as discussed above, subheading 3204.19.40 is the only place where the subject merchandise may be classified. Subheadings 3204.11 through 3204.17 specify "dye" or "pigment" and the parties agree TLCs are not dyes or pigments. *See* DSMF and PR ¶ 4; DSMF and PR ¶ 5; DSMF and PR ¶ 6. Subheading 3204.19 reads "other, including mixtures of coloring matter of two or more of the subheadings 3204.11 to 3204.19 * * * other." The parties also admit that the TLCs "are not mixtures of coloring matter of two or more of the subheadings 3204.11 to 3204.19, HTSUS." DSMF and PR ¶ 8. Under subheading 3204.19, then, only 3204.19.40 which provides for "products described in additional U.S. note 3 to section VI" (referring to any product not listed in the Chemical Appendix), provides the classification for "mixtures" (which are not listed in the Chemical Appendix).[9]

Thus, the subject merchandise is properly classifiable under subheading 3204.19.40, if Plaintiff can adequately prove that the subject merchandise fits into the class or kind of goods for which the principal use is as coloring matter. Otherwise, it reverts to the basket provision of 3823.90.29.

IV

CONCLUSION

On a motion for summary judgment, the Court may not take it upon itself to weigh the significance of the conflicting evidence presented. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1988). At trial, the Court can hear testimony regarding the class or kind of goods to which

[9] The Government has not brought a cross-claim under subheading 3204.19.40.

the subject imports belong. If the testimony conflicts, the Court can then assess the evidence to determine if the evidence is reliable and persuasive. *See, e.g., G. Heilman Brewing Co. v. United States*, 14 CIT 614, 622 (1990). Summary judgment is inappropriate because the Court cannot make such a decision at this time. *See Anderson*, 477 U.S. at 249. Consequently, it is hereby

ORDERED that plaintiff's motion for summary judgment and defendant's cross-motion for summary judgment are DENIED; it is further

ORDERED that, within fifteen (15) days of the date of this memorandum and order, the parties shall confer and apprise the Court of a convenient trial date during the month of May, 1996.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C96/22 3/19/96 Musgrave, J.	Fabil Manufacturing, Co.	88–12–00943	Various rates	376.56 16% (1981 and prior); 15% (1982); 13.5% (1983); 12.1% (1984); 10.6% (1985); 9.1% (1986); 7.6% (1987)	Agreed statement of facts	New York Clothing (jackets) style numbers: 1; 1201; 1202; 1206; etc.
C96/23 3/19/96 Musgrave, J.	Fabil Manufacturing, Co.	90–12–00682–S	Various rates	376.56 16% (1981 and prior); 15% (1982); 13.5% (1983); 12.1% (1984); 10.6% (1985); 9.1% (1986); 7.6% (1987)	Agreed statement of facts	New York Clothing (jackets) style numbers: 1032; 1307; 1313; 9751; etc.

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